

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

ELLOYD JOHNSON	§	
VS.	§	CIVIL ACTION NO. 9:18-CV-85
DIRECTOR, TDCJ-CID	§	

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE  
REGARDING PETITIONER'S MOTION FOR DEFAULT JUDGMENT

Petitioner Elloyd Johnson, a prisoner confined at the Polunsky Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brings this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The above-styled action was referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636 and the Local Rules for the Assignment of Duties to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Petitioner has filed a motion for default judgment. This Report and Recommendation considers the merits of the motion.

Analysis

Federal Rule of Civil Procedure 55 authorizes the entry of a default judgment against a party against whom a judgment for affirmative relief is sought when such party fails to plead or otherwise respond to the action. A default judgment is a discretionary remedy. *Effjohn Int'l Cruise Holdings, Inc. v. A&L Sales, Inc.*, 346 F.3d 552, 563 (5th Cir. 2003). The United States Court of Appeals for the Fifth Circuit generally favors resolving cases on the merits, but has found that considerations of social goals, justice, and expediency may warrant the exercise of the district court's discretion to

grant a default judgment. *In re Chinese Manufactured Drywall Products Liability Litigation*, 742 F.3d 576, 594 (5th Cir. 2014). Because the entry of judgment by default is a drastic remedy, it should be used only in extreme situations. *E.F. Hutton & Co. v. Moffat*, 460 F.2d 284, 285 (5th Cir. 1972); *see also Effjohn*, 346 F.3d at 563 (emphasizing that defaults are not favored and any doubts should be resolved in favor of the defendant). It is only appropriate where there has been a clear record of delay or contumacious conduct. *Moffat*, 460 F.2d at 285.

The respondent has not been ordered to respond to the petition. Therefore, the motion for default judgment is premature and should be denied.

#### Recommendation

Petitioner's motion for default judgment should be denied.

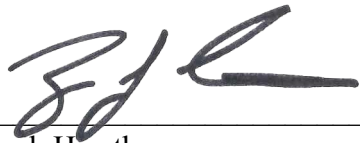
#### Objections

Within fourteen days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings of facts, conclusions of law and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C).

Failure to file written objections to the proposed findings of facts, conclusions of law and recommendations contained within this report within fourteen days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings, conclusions and recommendations and from appellate review of factual findings and legal conclusions accepted by

the district court except on grounds of plain error. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc); 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72.

SIGNED this 30th day of August, 2019.



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Zack Hawthorn  
United States Magistrate Judge